

From: [Cassandra B Merrick](#)
To: [Brendan M. Kenny](#)
Cc: [Christopher W Madel](#)
Subject: Re: Computer Forensic Services v. BHB—Follow Up on Post-Dispute Agreement Proposal
Date: Friday, August 12, 2022 10:55:50 AM
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)

Brendan,

Without addressing the arguments you raised below—which are irrelevant to the straightforward decision about the venue in which this dispute will be arbitrated—CFS will move to compel arbitration on Tuesday, August 16 unless we receive an agreement to arbitrate before either JAMS or AAA by then.

Best,

Cassie Merrick
612-605-0632 (direct)

From: "Brendan M. Kenny" <bkenny@hjlawfirm.com>
Date: Friday, August 12, 2022 at 9:33 AM
To: Cassie Merrick <cmerrick@madellaw.com>
Cc: Christopher W Madel <cmadel@madellaw.com>
Subject: RE: Re: Computer Forensic Services v. BHB—Follow Up on Post-Dispute Agreement Proposal

Cassie,

This follows up on the written post-dispute agreement proposal that we have been preparing for you and your client's consideration. We intended to get this to you this week. Unfortunately, pressing issues in other cases have diverted my client's resources, and the proposal has not yet been finalized on our end. We intend to get the proposal to you early next week.

Thanks,
-Brendan



BRENDAN M. KENNY

Attorney at Law

Direct: 952-746-2139

hjlawfirm.com

From: Brendan M. Kenny
Sent: Wednesday, August 3, 2022 7:58 PM
To: cmerrick@madellaw.com
Cc: cmadel@madellaw.com

DEFENDANT'S
EXHIBIT

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Subject: Re: Computer Forensic Services v. BHB—Follow Up on Arbitration

Cassie,

This follows up on our discussion regarding the status of this matter. As you know, my client contact was on vacation last week and returned to the office on Monday. We are preparing a written post-dispute agreement proposal for you and your client's consideration that we anticipate getting to you next week.

There are also other matters that we discussed during our July 20 call that I wanted to follow up on.

First, you indicated that there is a case involving CFS that you contend supports CFS's position that computer-processing time is appropriately billed as analyst time. I have not seen it. Please provide me with the order in the case that you believe supports CFS's position, and we will review it.

Second, we discussed how your client threatened to destroy the evidence in its possession, and BHB responded by demanding that it be preserved because it is evidence relevant to a pending federal proceeding. Without my client's knowledge or consent, CFS responded by *live-hosting* the data rather than preserving it in cold storage, and now apparently seeks to be paid for that. As I stated to you then, there are few things clearer in the eDiscovery, forensic, and information governance worlds than this: a duty to preserve data and a duty to host data are too entirely different things. Of course, BHB didn't retain CFS to host data, much less serve as a document-review platform.

To the extent that CFS is still hosting the data and purporting to accrue charges, we again emphatically state: CFS must stop immediately. The data should be returned immediately. Please confirm by August 12 that CFS will do so. (At minimum, the data should be preserved, not hosted.)

Thanks,
-Brendan

BRENDAN M. KENNY

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